No. 9(1)81-6Lab/14324. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of (i) M/s Harbans Lal, Prem Kumar (P) Ltd., Faridabad and (ii) Elem Metal Industries, Plot No. 18/1, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 53 of 1979

between

SHRI RAM AVTAR, WORKMAN AND THE MANAGEMENT OF M/S HARBANS LAL PREM KUMAR (P) LIMITED FARIDABAD AND (II) M/S ELEM METAL INDUSTRIES, PLOT NO. 18/1, FARIDABAD.

Shri Sagar Ram Gupta for the workman.
Shri M. R. Dua for the respondent management.

AWARD

This reference No. 53 of 1979 has been referred to this Court by the Hon'ble Governor of Haryana, - *vide* his order No. ID/FD/200/51752, dated 7th December, 1979, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Ram Avtar workman and the management of M/s (i) Harbans Lal, Prem Kumar (P) Limited, Faridabad and (ii) M/s Elem Metal Industries, Plot No. 18/1, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Ram Avtar was justified and in order ? If not, to what relief is he entitled ?

Notices were sent to the parties, after receiving the said reference, the parties appeared and filed their pleadings. On the demand notice and claim statement, the case of the workman is that he was a permanent employee since September, 1973 with the respondent M/s Harbans Lal, Prem Kumar (P) Limited, Faridabab at @ Rs. 183/- per month and his work was sasisfactory. The workman was on leave from 12th May, 1977 to 12th June, 1977 and on 11th June, 1977 when he came from leave, the respondent refused to provide the work to the workman. The workman was victimised due to his Trade Union activities. The termination is against the Standing orders of the company and principle of justice. In the mean time the employer No. 1 changed itself into employer No. 2. Therefore, the workman impleaded respondent No. 1 in his demand notice. The case of the respondent according to its written statement is that M/s. Elem Metal Industries, Faridabad, cannot be impleaded as party. M/s. Harbans Lal, Prem Kumar (P) Limited is a company incorporated under the companies Act and were having their factory at Faridabad. Therefore, the reference cannot be sustained and merits dismissal. M/s. Eelem Metal Industries is not the changed name of M/s. Harbans Lal-Prem Kumar P. Ltd., and the correct name of M/s Elem Metal Industries is M/s. Elem Metal Industries Private Ltd. The workman was employed on 18th 1973 and the workman met with an accident on 13th September, 1973. He was covered by E.S.I., but out of jesture of good will and on humantarian ground he was taken on duty on 4th March, 1974 but as the factory was closed on 31st March, 1977 his services were terminated accordingly. The question of conceding the demand does not arise with the factory was closed.

On the pleadings of the parties, following issues are framed :

(1) Whether the management No. 2 is employer in this case? If not, to what effect ?

(2) Whether the termination of the service of the workman is proper, justified and in order ? If not. to what relief is he entitled ?

My issue-wise findings are as under :-

Issue No. 1 :

Issue No. 1 is whether the respondent No. 2 is employer in this case ? If so to what effect?

The respondent's representative argued on this issue that the workman has admitted in his cross-examination as WW-1 that he was never got appointed by M/s Elem Metal Industries, Faridabad respondent No. II and he did not know if M/s. Elem Metal Industries Faridabad are the successor of the respondent No. 1. When the workman himself admits this fact that he was not employed by the respondent No. II and does not know about its succession then it is proved case in respect of this issue that respondent management No. II is not a employer of the workman. These are two different companies registered under companies Act memorandums of which are Ex. M-1 and M-2. They are two different Companies registered under the companies Act according to these memor andums. So it is a proved fact that the respondent No. II shown in the reference is not a employer of the workman.

The representative of the workman argued that both the management has given one written statement in the Court which shows that two have some relation and is a successor of the first respondent.

After hearing the arguments of both the parties, and carefully going through the file, I am of the view that after admission from the workman and not proving otherwise, the respondent management No. II whown in the reference is not the employer of the workman and no liable to any claim of the workman. So the issue is decided in favour of the respondent No. II and againsgst the workman.

Issue No. II.-

Issue No. II is as per reference ? On this issue the representative of the respondent argued that the workman was employed in the company in the year 1973 and the workman met with an accident on 13th September, 1972. After that he was re-employed on 4th March, 1974, but due to the closure of the factory on 31st March, 3 1977, his services were terminated. So there was no allernative with the respondent-management except terminate his services after the closure of the factory.

The representative of the workman argued that the workman was a permanent employee of the respondent and joined his service in the year 1973. The workman went on leave on 12th May, 1977 to 6th June, 1977 because he received a telegram from his home which is Ex. W-1 and the workmen's father was seriously ill. He went home after got duly sanctioned the leave application and when he returned from leave on 13th June, 1977 the workman was not allowed to enter in the factory and his stated by the workman's statement as WW-1 he was asked to take the all and final accounts so the workman raised the demand, He has stated in his statement that this factory is still working with a Board outside the factory. The workmen's representative argued that the respondent has stated in this written statement that he factory was closed on 31st March, 1977 but produced no documents in the Court for the closure of the factory. There is no notice sent to the government for closure of the private company. No notice was given to the workman in this respect. If it is admitted that the factory was closed and the workman was retrenched even then the respondent has failed to pay the retrenchment compensation or notice pay to the workmen. They have not offerred or sent through money order and it is not the case of the respondent simply coming

and saying in the Court that the factory is closed and does not prove that the factory is closed. So in the absence of any proof given by the respondent in the court of the closure, shows that the factory is running and termination made by the respondent is illegal and without any reason.

After hearing the arguments of both the parties, I feel that the respondent has utterly failed to produce any evidence. What they have stated in their written statement which goes against them and the termination of the workman is not justified and in proper order. So the workman is entitled for his reinstatement with full back wages and continuity of service. No order as to costs.

This be read as an answer to this reference.

HARI SINGH KAUSHIK,

Dated the 22nd November, 1981.

Presiding Officer,
Labour Court, Haryana;
Faridabad.

Endorsement No. 3308, dated the 27th November, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment, Department Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1) 81-6Lab/14325.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. Didi Modes Pvt. Ltd., Faridabad :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 39 of 1979

between

SHRIMATI D. SHARMA, WORKMAN AND THE MANAGEMENT OF M/S DIDI MODES PRIVATE LIMITED, FARIDABAD.

Shri Sagar Ram Gupta for the workman.

Shri Ajant Kumar for the Respondent-Management.

AWARD

This reference No. 39 of 1979 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/179-79/50384, dated 28th November, 1979, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shrimati D. Sharma, workman and the management of M/s Didi Modes Private Limited, Faridabad. The term of the reference was :—

Whether the termination of service of Shrimati D. Sharma was justified and in order ? If not, to what relief is she entitled ?

Notices were issued to the parties, after receiving this reference. The parties appeared and filed their pleadings in the Court. According to the demad notice and claim statement and rejoinder the case of the workman is that she was appointed in February, 1978 in the factory on a salary of Rs. 600 per month and on 26th June, 1979 when she went to factory to submit a copy of medical certificate wherein she was advised for seven days rest, she was not allowed to enter in the factory by the security staff. She was appointed as Supervisor on a monthly salary of Rs. 600 and confirm from 1st January, 1979 after 10 months duration. The work was upto the satisfaction of the management and do the mannual clerical and job supervisory nature. The work woman made a complaint against one Supervisor Smt. Vijay Bawa on 24th June, 1979. The management dis-liked this complaint against the other supervisor and dis-allowed the work woman on the work in the factory. The termination so effected by the respondent management amounts to clear violation of section 25 F and N of the Industrial Disputes Act, 1947.

The case of the respondent according to its written statement is that the work woman is not covered under the definition of 2(S) of the Industrial Disputes Act, 1947 as she was appointed as supervisor with a monthly salary of Rs. 600 and nature of work was managerial and supervisory so the claim is not maintainable and liable to be dismissed. The work woman was not doing any mannual or clarical nature which was doing a supervisory work. It is not denied that she made a complaint against Smt. Vijay Bawa on 24th June, 1979. It is denied that due to this complaint the present action of termination was taken. Her services were termination according to clause No. 8 of the appointment letter, dated 24th February, 1976 and the management is justified in terminating her services.

On the pleadings of the Parties, the following issues were framed :—

(1) Whether the claiment is a workman under the category of 2(S) of the I.D. Act ? If so, what effect ?

(2) Whether the services of the workman were terminated on legal, justified and proper grounds ? If so, to what effect ? (OPM).

(3) Whether the factory is closed since 31st October, 1979 and it has not been kept closed intentionally by the management ?

(4) Relief ?

My findings issue-wise is as under :-

Issue No. I :

Issue No. 1 is that the applicant does not come under the definition of the workman under the Industrial Disputes Act ?

On this issue, the representative of the respondent argued that appointment letter Ex. W-1 is very clear in this respect in which she was appointed as Supervisor on a salary of Rs. 600 per month, which is admitted by the claimant in his statement about the signature on Ex. M-1 at mark "A" & "B". The claimant was appointed as supervisor and used to supervise the working of the other workmen in the factory. She used to grant leaves to other workmen working under her which is shown in EX-M-8 to M-10. The claimant has signed these documents and admitted in her statement as WW-1. She used to attend the meeting of the supervisors which is called by the Factory Manager which is shown as Ex. M-22 to M-24 in which the claimant has signed on the sheets. He further argued that the workman used to check and assist the workman's production as Ex-M10 and M-11. on which the claimant has signed. So the claimant used to supervise the work of the workmen working under him and used to confirm the overtime to the workmen as Ex. M-15 and M-16. In these circumstances, the claimant of the slaimant under the Industrial Disputes Act is not maintainable as she was working as supervisor and not a workman in the factory.

The representative of the workman argued on this issue that the claimant used to do mannual work on machines, sewing and stich and wholes and buttons, in place of absentee workman and when no substitute was available. The work was done on every working day. If any defect is used to be found in the production pieces, which was used to streched by the claimant herself. Samples of garments used to be prepared by the claimant with her own hand. Counting of daily production was done by the claimant in the factory. The claimant used to do the clarical job as submission of the reports in writing, requirement of shortage of material thread, niddle etc, recommending leaves sanction of which was done by other superior officer. Making stock report for the purpose of banking at the last of every month which clears that the main job of the workman is technical style and not supervisory job and for all practicle purposes claimant was a work women as define under section 2(s) of the Industrial Disputes Act. Though some incidential job were required to be performed which are incidential to the main job and duties and supervisory were not the main work of the claimant. He further, argued that the claimant statement as WW-1 in which she had stated that she used to work mostly on machines and prepare copies samples. She also used to do to stretch the holes and button. She also remove the faults in the garments on the machines or with her own hands. She also fill the vacancy of one of the absentee. She also used to take the pieces prepared by the workman as to whether they are according to the measures prescribed, and counts the pieces prepared. She used to rectify the defects croping up in the machine. She had further stated that she had no power to grant leave or advances to the workmen and had no power to recruit and terminate the services of the workman. She had no power to promote or demote the workman. She signed the papers as directed by the management. Otherwise she had to work on machine with her own hands. In her cross examination the claimant had stated that she used to count the total pieces manufactured in the machines ; and goods received from the production department. He further argued that in the statment of Shri R.K. Rai, Personnel Officer as MW-1 has stated that I do not know whether the claimant at any time had worked as workman on machine etc. with her own hands. It shows that the claimant was doing the work with her own hands and the same facts is concealed by the witness. Otherwise he should have stated directly that she did not do the work with her own hands.

After hearing the arguments on this issue of both the sides and going through the file of the reference, I am of the view that the respondent has failed to prove that the claimant was having the managerial power and comes under the supervisory category. The claimant has proved her case fully-well which was not rebutted by the respondent. So I hold that the claimant was a work woman under the definition of the Section 2(S) of the Industrial Disputes Act and decide this issue in favour of the claimant and against the respondent.

Issue No. 3 :

Issue No. 3 is whether the factory is closed since 31st October, 1979 and it has not been kept closed intentionally by the management ?

The representative of the respondent argued that the Faridabad unit was closed in the beginning of November, 1979 due to labour problem and other reasons and was closed permanently and the premises were handed over to the landlord. The closare notices was sent to the Secretary, Labour Department, Haryana, copy of which is Ex. M-26 and its annexure statement of reason is Ex. M-26-A and the respondent received a letter from the Labour Commissioner which is Ex. M-28. The list of workmen working in the Faridabad unit were prepared by Shri Mukesh Meta, witness who has stated in his statement as MW-1 that he prepared the list of the workmen as Ex. M-29 and the workman numbering about 186 took their full and final account on account of closure. The representative of the workman argued on this point that the closure notice Ex. M-26 is dated 30th August, 1979 after the termination of the claimant. The respondent did not inform about the closure of the company to the claimant even before the Conciliation proceedings, so it is not in the knowledge of the claimant whether the factory is closed or working.

After hearing the arguments of parties, I am of the view that the arguments put forwarded by the respondent management is not rebutted by any documents of witness so it is proved that the factory is closed finally and not with the bad intention of the respondent. So the issue is decided against the workman and in favour of the respondent.

Issue No. 2 :

On this issue the representative of the respondent argued that when issue No. 2 the closure of the factory, is not disputed by the workman's representative then the claimant can only claim the benefits of retrenchment at the most, which is not the case, when the services of the workman were terminted in June, 1979, the claimant is not entitled to any relief after termination in the month of June, 1970 according to the terms and conditions of her appintment letter Ex. M-1. The terms and conditions are very clear in para 8 of Ex. M-2 which is admitted by the claimant and signed the same at mark "A", the termination is according to the terms and conditions of the appointment letter which is justifed and in order.

The representative of the workman argued that the respondent failed to put his case very clearly in the court. He has not stated anywhere on what faulty the claimant was terminated. The respondent alleged no fault of the claiment, in his statement or in their written statement which shows that the claimant was terminated only due to annoyance of the management on the complaint filed by the claiment against the other superviser on 24th June, 1979. So, the workman is entitled to her reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties, I am of the opinion that the services of the claiment, was terminated without any allegation and charges and not according to the terms and condition of the appointment letter. So, the termination was not justified and in order and as issue No. 3 has been decided in favour of the respondent that the factory is closed so the claimant is only entitled for the benefits of retrenchment under section 25-F and wages and other benefits upto closure of the factory from date of termination.

No order as to costs. This be read in answer to this reference.

HARI SINGH KAUSHIK,

The 22nd November, 1981.

Presiding Officer,
Labour Court,
Haryana, Faridabad.

Endorsement No. 3307, dated 27th November, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court,
Haryana, Faridabad.